



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

### WARM SPRINGS RESOURCE AREA

15 East 500 North  
Fillmore, Utah 84631



IN REPLY REFER TO:

3800  
UT055

RECEIVED  
AUG 17 1990

August 16, 1990

Clyde Cheney  
Sapphire Co.  
462 Sego Ave.  
Salt Lake City, Utah 84111

DIVISION OF  
OIL, GAS & MINING

Dear Mr. Cheney,

Your notice to conduct mining related operations on your claims, Spectrum and Spectrum Number 1 through 7, UMC 46344-46354 and 2576587 in T. 17 S., R. 13 W, Sections 14, 22 and 23, has been received and accepted by this office. Your notice has been assigned case file number UT-055-90-12N. Please use this number in any future correspondence concerning this notice. We understand that your operations will be confined to areas that have been previously disturbed as shown on the map which you sent us on August 10, 1990.

If you change your operation from what is described in your notice, please contact this office prior to the change. If your operations extend for more than one year, please advise this office of the status of your mining related activity on the anniversary date of your notice.

A copy of your notice has been sent to the Utah Division of Oil, Gas and Mining (DOGM); therefore, you will not have to file this notice with DOGM. However, reclamation under this notice is required to conform to the standards of the Utah Mined Land Reclamation Act. Also, all mining claimants and operators that plan to use, store, or divert water are required by Utah statute to notify the Utah Department of Water Resources at:

1636 West North Temple  
Salt Lake City, Utah 84180-1203

As required by 43 CFR 3809, Surface Management Regulations, reasonable measures must be taken to prevent unnecessary or undue degradation of public lands during your operations. Please notify this office upon completion of operations and reclamation, so an inspection may be conducted on the site.

We have taken the opportunity presented by the submittal of your notice to review the entire file related to your operation. Your organization has submitted 5 previous Notices of Intent. We are administratively closing these and consolidating them under case file number UT-055-90-12N. Therefore, the following cases are closed:



*Cases  
now  
closed*

Serial Number  
UT-057-6N  
UT-057-26N  
UT-057-34N  
UT-057-42N  
UT-057-89-04N

Date Accepted  
August 20, 1981  
September 12, 1985  
July 29, 1986  
August 18, 1987  
August 9, 1989

In April of 1979, you entered into an agreement with Mark Bailey, then Warm Springs Area Manager, on the use of water from the Antelope Springs pipeline. A reading of the agreement indicates that non-use of water for one year would terminate the agreement. We believe that this has taken place. Also, the agreement does not conform to present Bureau policy. Therefore, this agreement is cancelled. A recent decision of the Interior Board of Land Appeals (IBLA) addressed water use by mining claimants. This decision held that a right-of-way from the BLM was needed for a mining claimant to transport water across public lands to his/her claim (Desert Survivors, 96 IBLA 193, 196-197 (1987)). This decision addressed pipelines. In your situation, where you have truck hauled water, a right-of-way would not be needed provided you used existing access, but we would have to address your use of government facilities to provide water at the time when you needed that water.

We are of the preliminary opinion that the deposit which you have claimed is common variety and as such is not open to location. I have enclosed a draft staff report addressing this issue. This staff report was prepared in the same area for a material that is quite similar to the one which you have claimed. We are aware of the mineral report prepared by Eugene Pearson (November 24, 1958) which concluded that the material in which you were interested should be considered locatable under the mining laws. The courts have addressed this same issue several times in the past 32 years. Two of the most notable opinions in regard to your claims are McClarty v. Secretary of Interior, 408 F.2d 907, 908 (9th Cir. 1969) and U.S. vs. Dunbar Stone Co., 56 IBLA 61 (1981). I am enclosing a copy of each of these cases for your records. In McClarty, the Court set the following standards to distinguish between common varieties and uncommon varieties:

1. There must be a comparison of the mineral deposit in question with other deposits of such minerals generally;
2. The mineral deposit in question must have a unique property;
3. The unique property must give the deposit a distinct and special value;
4. If the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and
5. The distinct and special value must be reflected in the market place (or in reduced cost or overhead so that the profit to the claimant would be substantially more).

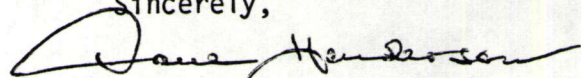


Should a final determination by the Department of Interior be made that this material is, in fact, "common variety", you could be responsible to the United States for the value of this material, damage to the land, and the administrative costs of recovering such compensation.

Acceptance of your notice will not now, nor in the future, serve as a determination of the validity nor ownership of any mining claim included under your notice.

Thank you for submitting your notice. If you have any questions regarding this letter, or care to discuss any of the issues presented, please feel free to contact Phil Allard at (801) 743-6811.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dave Henderson", with a large, stylized initial "D".

Dave Henderson  
Area Manager

Enclosures:

As Stated Above

cc: D. Wayne Hedberg, DOGM  
Jerry Reagan, Millard County Planning and Zoning  
Aleda Jensen, Salt Lake City